

## **REMARKS**

This is a full and timely response to the outstanding final Office Action mailed October 12, 2006. Reconsideration and allowance of the application and pending claims are respectfully requested.

### **I. Claim Rejections - 35 U.S.C. § 102(b)**

Claims 1-3, 5-31, 33, and 38-47 have been rejected under 35 U.S.C. § 102(b) as being anticipated by *Konishi, et al.* ("Konishi," U.S. Pub. No. 2002/0003576). Applicant respectfully traverses this rejection.

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(b).

In the present case, not every feature of the claimed invention is represented in the Konishi reference. Applicant discusses the Konishi reference and Applicant's claims in the following.

#### **A. The Konishi Disclosure**

Konishi discloses a video camera apparatus having a "VIDEO MODE" in which high quality video can be captured, and an "INTERNET MODE" in which lower quality video can be captured for real time transfer via the Internet. As described by Konishi:

The video camera apparatus 11 has two video shooting/recording modes, i.e., video mode (VIDEO MODE) and Internet mode (INTERNET MODE). The video mode is a mode for shooting a high quality motion video, and is mainly used to obtain an encoded motion video file to be reproduced and displayed on the TV 12 or personal computer 13. The Internet mode is a mode for obtaining an encoded motion video file having a low bit rate that is suitable for real time transfer of a motion video via the Internet. *The user can properly select the video mode and Internet mode with an operation button.* When the video mode is selected, motion video compression encoding at a high bit rate that is necessary to attain high quality is executed. When the Internet mode is selected, the target bit rate of motion video compression encoding is automatically switched to a value optimal for real time transfer of a motion video via the Internet. An arrangement for switching the bit rate in accordance with selection of the video mode/Internet mode is shown in FIG. 3.

*Konishi*, paragraph 0069 (emphasis added). Therefore, Konishi describes a system in which *the user* can manually choose the mode with which the video camera collects data.

#### **B. Applicant's Claims**

As is noted above, Konishi fails to teach several of Applicant's claim limitations. Applicant discusses some of those claim limitations in the following.

**1. Claims 1-3, 5-8, and 43**

Applicant's claim 1 provides as follows (emphasis added):

1. A method for dynamically processing data, the method comprising the steps of:

*determining a sustainable data transfer rate between a data appliance and an external memory medium that is directly connectable to the data appliance;*

*selecting a value for at least one operational parameter within the data appliance in response to the sustainable data transfer rate; and*

*processing data in accordance with the at least one operational parameter.*

Regarding claim 1, Konishi at least does not teach "determining a sustainable data transfer rate between a data appliance and an external memory medium that is directly connectable to the data appliance" or selecting a value "in response" to that data transfer rate. Instead, as described above, Konishi teaches *a user* selecting a mode in which Konishi's camera collects data. Given that the user makes the determination as to the mode, there is no "determination" as to any "sustainable data transfer rate" that exists between the camera and the storage medium. Applicant further notes that Konishi is not concerned at all about the "sustainable data transfer rate" between the camera and the storage medium. Instead, Konishi is only concerned about the medium over which the data will be later transmitted. In particular, Konishi states that the mode is selected "so as to match a bit rate of an encoded signal obtained by the motion video encoding section *with a communication speed of the network used to transmit the motion video file.*" Konishi, paragraph 0013 (emphasis

added). As a final matter regarding the "determining" limitation, Applicant notes that although Konishi describes a higher bit rate default setting that is used when a PCMCIA card hard disk 122 is inserted in the camera, Konishi's camera makes no "determination as to a "sustainable data transfer rate" between the camera and the PCMCIA card. Instead, the mere presence of the card results in the default setting.

For at least the foregoing reasons, claim 1 and its dependents are allowable over Konishi. Applicant notes, however, that claims that depend from claim 1 contain further limitations that are not taught by Konishi. Applicant discusses some of those claims in the following.

Regarding dependent claim 2, Konishi does not teach "transferring a test file between the data appliance and the external memory medium". Regarding Konishi's "index file," which is cited in the Office Action as comprising a "test file," Applicant notes that Konishi's index file clearly is not a test file that is used to determine a sustainable data transfer rate. First, as mentioned above, Konishi does not even contemplate the concept of determining a sustainable data transfer rate *between the camera and the storage medium*. Second, Konishi's index file is used to "index" the video that is captured, not to test a rate of data transfer. As described in paragraph 0127 of the Konishi reference, the index files are generated from a frame at the beginning of a video sequence and from a frame at the end of a video sequence and therefore mark or "index" the beginning and end of the video sequence.

Regarding dependent claim 8, Konishi does not teach "determining a desired data transfer rate responsive to the sustainable data transfer rate". Again, Konishi does not even contemplate the concept of a sustainable data transfer rate between the

camera and the storage medium. It follows then that no determination of a desired data transfer rate is made "responsive to" the sustainable data transfer rate.

Regarding dependent claim 43, Konishi does not teach that his PCMCIA card is "flash memory card". Although Konishi states the PCMCIA card is *treated like* the internal flash memory of the camera, meaning that it is simply regarded as another available storage medium, Konishi does not actually state that the PCMCIA card *is* flash memory. Again, 35 U.S.C. § 102 requires that the applied reference actually teach each and every limitation of the claim.

## **2. Claims 9-17 and 44**

Applicant's claim 9 provides as follows (emphasis added):

9. A data appliance, comprising:

an acquisition system configured to acquire data in response to an acquisition parameter;

a processing system coupled to the acquisition system, the processing system configured to transform data in response to a processing parameter; and

a memory interface coupled to the processing system, *wherein the data appliance configured to select a value associated with at least one of the acquisition parameter and the processing parameter responsive to a sustainable data transfer rate between the memory interface and an external memory medium that is directly connectable to the data appliance.*

Regarding claim 9, Konishi at least does not teach a data appliance configured to select a value associated with at least one of the acquisition parameter and the processing parameter "responsive to a sustainable data transfer rate between the

memory interface and an external memory medium that is directly connectable to the data appliance". As described in relation to claim 1, Konishi does not even contemplate the concept of a "sustainable data transfer rate between the memory interface and an external memory medium" and further makes no selections based upon that transfer rate.

Regarding dependent claims 10 and 11, Konishi fails to teach a "test file" or transmitting the test file to a memory medium to "measure a sustainable data transfer rate" for reasons described above.

Regarding dependent claims 12 and 13, Konishi does not teach a "sustainable data transfer rate" whether it be associated with a write or a read operation.

Regarding dependent claim 17, Konishi does not teach a "range of sustainable data transfer rates" for reasons described above.

Regarding dependent claim 44, Konishi does not teach that his PCMCIA card is "flash memory card" for reasons described above in relation to claim 43.

### **3. Claims 18-23 and 45**

Applicant's claim 18 provides as follows (emphasis added):

18. A system for responding to a data transfer rate, the system configured for use in a data appliance, the system comprising:

*means for determining a sustainable data transfer rate for data transfers to/from an external memory medium that directly connects to the data appliance;*

means for acquiring a data stream;

means for transforming the data stream; and

*means for selecting a value for at least one operational parameter associated with the means for acquiring or the means for transforming the data stream in response to the sustainable data transfer rate.*

Regarding claim 18, Konishi at least does not teach "means for determining a sustainable data transfer rate for transfers to/from an external memory medium" or means for selecting a value "in response" to that data transfer rate for reasons described in relation to claim 1.

Regarding dependent claim 45, Konishi does not teach that his PCMCIA card is "flash memory card" for reasons described above in relation to claim 43.

#### **4. Claims 24-31, 33, and 46**

Applicant's claim 24 provides as follows (emphasis added):

24. A computer-readable medium of a data appliance having stored thereon an executable instruction set, the instruction set, when executed by a processor, directing the processor to perform a method comprising:

- retrieving a test file and an initial bit rate;

- transferring the test file to an external memory medium that is directly connectable to the data appliance;

- determining if a data transfer error condition exists;

- when it is the case that no data transfer error exists, recording the bit rate to generate a sustainable data transfer rate;

- when it is the case that a data transfer error exists, decreasing the bit rate to generate an interim bit rate and repeating the transferring, determining, decreasing, and recording steps.

Regarding claim 24, Konishi does not teach *any* of “retrieving a test file”, “transferring the test file to an external memory medium”, “determining if a data transfer error condition exists”, “when it is the case that no data transfer error exists, recording the bit rate to generate a sustainable data transfer rate”, or “when it is the case that a data transfer error exists, decreasing the bit rate to generate an interim bit rate and repeating the transferring, determining, decreasing, and recording steps”. Again, Konishi neither contemplates a “sustainable data transfer rate” between a camera and a storage medium or any way of determining what that data transfer rate is, using a test file or otherwise. Claim 24 and its dependents are therefore clearly allowable over Konishi.

Regarding dependent claims 25, 26, 31, 33, and 46 Applicant refers to the discussions provided in the foregoing.

## **5. Claims 38-42**

Applicant’s claim 38 provides as follows (emphasis added):

38. A digital camera, comprising:
- an image acquisition system configured to generate a video data stream;
  - a data processing system configured to receive and transform the video data stream to generate a compressed data stream;
  - an external memory interface coupled to the data processing system and *configured to feed back a sustainable data transfer rate to one of the image acquisition system and the data processing system, the sustainable data transfer rate related to the rate at which data can be transferred between the external memory interface and a removable memory card that couples to the external memory interface.*



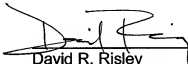
Regarding claim 38, Konishi fails to teach an external memory interface "configured to feed back a sustainable data transfer rate to one of the image acquisition system and the data processing system, the sustainable data transfer rate related to the rate at which data can be transferred between the external memory interface and a removable memory card that couples to the external memory interface" for reasons described above.

Regarding dependent claims 41 and 42, Applicant refers to the discussion of claims 12 and 13 above.

### CONCLUSION

Applicant respectfully submits that Applicant's pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

  
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